IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 8600 OF 2024
IN
FIRST APPEAL (St.) NO. 13491 OF 2024

Chandi Prasad Poddar]
Son of Late Durga Prasad Poddar]
an Indian Inhabitant]
Age : 70 yrs, Occ: Business,]
Residing at Permanent Address :]
3/1, Krishna Behari Sen Street,]
Kokatta-700073]
and presently residing at Flat Nos. 4A & 4B]
(4th Floor) 56A, Pratapaditya Road,]
Kolkatta 70006]
18.755% shareholder of the Company]
M/s. Ramkumar Shewchandray & Sons Pvt Ltd.] **...Appellant.**

Versus

1) Ramkumar Shewchandray & Sons Pvt. Ltd,]
A private Limited Co., incorporated under]
the Indian Cos. Act, 1913, having its office]
at 336-A, Kalbadevi Road, Bombay-2]
presently registered office is in Kolkatta]
Email Address :]
Poojaenterprises25@rediffmail.com.]

2) Shri Pankaj Anantrai Bhuwa,]
Indian Inhabitants and carrying on]
business at and from 533,]
Kalbadevi Road, Bombay – 2.]

3) Shri. Ashwin Anantrai Bhuwa]
(Deleted since deceased)]

3a) Charulata Ashwin Bhuva]
of Mumbai, Adult, aged 73 yrs,]
Indian Inhabitant, Residing at 802,]
Girnar Building, Opp. A.C.Market,]
Tardeo Mumbai 400034.]

3b) Hema Pratik Goradia]
Of Mumbai Adult, Aged 45 years,]
Indian Inhabitant, residing at 603-604,]
6th Floor, Jamuna Niketan Building,]
10 Manav Mandir Road, near Manav Mandir,]

Malbar Hill, Mumbai 400006.]

3c) Heena Ashwin Bhuva]
of Mumbai, Adult, Aged 43 years,]
Indian Inhabitant, residing at 802,]
B-Wing, Bharat Sky Vista CHSL, D. N. Nagar,]
Behind Walia College, J.P.Road,]
Andheri West, Mumbai 400053.]

4) M/s. Staford Hotels Pvt Ltd & Co.,]
a private Ltd Co., Incorporated under]
Indian Cos. Act, 1913 and having its registered]
office at 913, Navjivan Society Building]
Nos. 3, 9th floor, Lamington Road,]
Bombay – 400008. (BUT IS DEFUNCT).] **...Respondents.**

WITH
INTERIM APPLICATION NO. 8601 OF 2024
IN
FIRST APPEAL (St.) NO. 13502 OF 2024

Mr. Ashok Kumar Poddar]
an Indian Inhabitants]
Age: 57, Occ: Business,]
Adult, Indian Inhabitant,]
Residing at 66 Marine Drive]
A/5 Zaver Mahal]
Mumbai 400020]
Near Wankhede Stadium.] **...Appellant.**

Versus

1) Ramkumar Shewchandray & Sons Pvt. Ltd,]
A private Limited Co., incorporated under]
the Indian Cos. Act, 1913, having its office]
at 336-A, Kalbadevi Road, Bombay-2]
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Poojaenterprises25@rediffmail.com.]

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business at and from 533,]
Kalbadevi Road, Bombay – 2.]

3) Shri. Ashwin Anantrai Bhuwa]
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3b) Hema Pratik Goradia]
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3c) Heena Ashwin Bhuva]
of Mumbai, Adult, Aged 43 years,]
Indian Inhabitant, residing at 802,]
B-Wing, Bharat Sky Vista CHSL, D. N. Nagar,]
Behind Walia College, J.P.Road,]
Andheri West, Mumbai 400053.]

4) M/s. Staford Hotels Pvt Ltd & Co.,]
a private Ltd Co., Incorporated under]
Indian Cos. Act, 1913 and having its registered]
office at 913, Navjivan Society Building]
Nos. 3, 9th floor, Lamington Road,]
Bombay – 400008. (BUT IS DEFUNCT).] **...Respondents.**

Mr. Pradeep Sancheti, Senior Advocate along with Mr. Nityoah Mehta, Ms. Vidhi Raichana i/b Nityoah Suneel & Associates for the Applicant in IA No. 8600 of 2024.
Mr. Sharan Jagtiani, Senior Advocate along with Ms. Pooja Kshirsagar Kane i/b Mr. Jay Mehta for the Applicant in IA No. 8601 of 2024.
Mr. Mayur Khandeparkar, Mr. Mehul Shah and Mr. Abhishek N. for Respondent No. 1.

Coram : Sharmila U. Deshmukh, J.

Reserved on : April 21, 2025

Pronounced on : April 25, 2025.

Order :

1. Both these Interim Applications seek leave to file Appeal under Section 96 of the Code of Civil Procedure, 1908 [for short ***"CPC"***] against the same judgment and order. Common submissions were advanced and applications are disposed of by this common order.

FACTUAL MATRIX:

2. First Appeals have been preferred against the judgment dated 23rd October 2023 passed by the City Civil Court in S.C Suit no 9797 of 1982 decreeing the suit for specific performance of an Agreement for Sale dated 24th April, 1981 executed by Respondent No 1 in respect of land bearing Final Plot No 942 admeasuring 3248 square meters with structures and building standing thereon situated at Prabhadevi Road, Mumbai in favour of Respondent Nos 2 to 4.

3. The share holding of Respondent No 1, which is family owned Company of members of Poddar family is held by the Applicants herein and one Rajendra Prasad Poddar in ratio of 18.75%, 37.5% and 43.75% respectively.

4. The Applications plead that on 15th July 1989, by virtue of Family Arrangement cum partition executed between Poddar family members, one of the agreements was that after paying of the liabilities of Respondent No.1-Company and adjustment of accounts, the share holding of present Applicants be transferred to Rajendra Prasad Poddar branch at mutually agreed valuation. Complaining of acts of oppression and mismanagement by Rajendra Prasad Poddar branch, the Applicant in IA No. 8601 of 2024, i.e., Ashok Kumar Poddar filed Company Petition before the Company Law Board. On 24th February

2004 the Company Law Board in its order, by observing that the Respondent No.1 is a defunct company having only one immovable property which is under litigation, linked the share valuation to the decision of the civil suit by directing that favourable outcome of the civil suit will value the share at Rs.958.10 per share and in converse situation at notional valuation of Re.1/- per share. The order was taken to the Calcutta High Court and interim restraining order was passed against Rajendra Prasad Poddar from compromising the civil suit. In final conclusion, by order dated 30th September, 2004, the Calcutta High Court approved the determination of share valuation based on outcome of civil suit and permitted Applicants to apply for impleadment in civil suit. The order was taken further to Hon'ble Apex Court and by order of 30th September 2004, the Hon'ble Apex Court disposed of the Appeal and held that in view of increase in the real estate prices, fresh valuation will be done after the suit is concluded.

5. In the interregnum, the Applicants sought impleadment in civil suit which was rejected on 8th February 2005 on the ground of absence of any independent right of Director in assets of the Company. The Appeal before the Division Bench of this Court was rejected on 5th April, 2005 observing that the remedy of Applicant is not by seeking impleadment in the suit and if the apprehension is that the Company will act to the detriment of the interest of the Company, it is always open to the Applicants to adopt appropriate proceedings as per law to safeguard the interest of company such as by resorting to the provisions of Sections 397 and 398 of the Companies Act or by filing derivative action.

6. S.C Suit No.9797 of 1982 continued to be defended by Respondent No.1-Company which was under the controlling management of Rajendra Prasad Poddar branch and the suit was decreed by impugned judgment dated 23rd October 2023. The Application for leave to file Appeal is premised on the effect that the decree has on the only asset of the Company which will be sold at meager value of Rs.20 lakh and directly impacts the Applicants. It is further contended that though communications were addressed by the Applicants to Rajendra Prasad Poddar requesting him to take appropriate steps for challenging the order, he has chosen not to file the Appeal and therefore present application has been filed.

7. The Application has been resisted by the original Plaintiff contending that consequent to the decree, it is for Poddar family to settle the share price as per the previous orders. The Applicant is trying to assume control over the management of Respondent No.1-Company by backdoor method by seeking to file the Appeal. In absence of any unfair prejudice, derivative action is not maintainable.

The remedy of Applicants lies in taking action under Section 241 / 242 of the Companies Act and no leave can be granted to file Appeal. The prayer for impleadment was rejected right upto Hon'ble Apex Court. It was further contended that under the family settlement as the share holding stood transferred to the branch of Rajendra Prasad Poddar, the Applicants are no longer shareholders of Respondent No.1-Company.

8. Affidavit-in-rejoinder was filed reiterating the Applicants stand and denying the averments of the reply Affidavit.

SUBMISSIONS:

9. Mr. Sancheti, learned Senior Advocate appearing for the Applicants in Interim Application No.8600 of 2024 has taken this Court in detail through the orders passed by Company Law Board, Calcutta High Court and the Hon'ble Apex Court and would submit that the judgment has resulted in property worth Rs.100 crore being sold at Rs.20 lakh. He would further point out that the order of the Division Bench of this Court dated 5th April 2005 against the order of rejection of impleadment has recognised the right to maintain derivative action. He submits that though Rajendra Prasad Poddar branch was called upon to take appropriate steps, no steps have been taken.

10. Drawing support from the decision of Hon'ble Apex Court in the case of ***H. Anjanappa v. A. Prabhakar***[1] he submits that that under Section 96 of CPC any person whose right is prejudicially affected by the impugned judgment and decree is a person aggrieved and entitled to file Appeal. He submits that by reason of the decree, the Applicant's shares are valued at a negligible amount due to the order of Company Law Board, which has directly and adversely impacted the Applicants interest. He submits that in event the Appellate Court considers the lapse of time to come to a conclusion that the value ought to be higher then in such eventuality the pecuniary benefit would directly impact the Applicant's right. He submits that the Applicants are integrally connected with the litigation as branches of family / shareholders of the family owned Company in the nature of quasi partnership and whose sole asset worth Rs.100 crore is decreed to be sold at Rs.20 lakh.

11. He would further submit that the fact that no Appeal has been filed by the branch of Rajendra Prasad Poddar would point to the collusion with the Respondent Nos.2 to 4,, which led to the restraint order by Calcutta High Court. He submits that the rejection of Application under Order-I Rule 10 of CPC is not germane to the present application. He submits that the Company law principle that the shareholders have no right in the assets of the Company is wholly irrelevant as the Applicant is not seeking any right in the assets of the

1 2025 SCC OnLine SC 183.

Company and the Applicant's case is of prejudice by the impugned order which is to be tested on the basis of factors mentioned in the decision in ***H. Anjanappa v. A. Prabhakar*** (supra).

12. Mr. Jagtiani, learned Senior Advocate appearing for the Applicants in Interim Application No. 8601 of 2024 would supplement the arguments and submits that the test for considering grant of leave to file Appeal is not whether the party is necessary or proper party but whether the party is aggrieved by the decision. He submits that as value of the property sought to be sold would determine the value of shares, the Applicants have a direct pecuniary and economic interest in view of the family settlement arrived at between the parties and it is not a remote interest. He submits that the fact that Respondent No.1-Company has not filed an Appeal shows *mala fide* intention. He submits that as per the unamended provisions of Specific Relief Act, increase in the market value would be a relevant consideration while decreeing the suit. He submits that Appeal is a statutory right of Appeal and as the Applicants were not party to proceedings, the present application has been filed.

13. *Per contra* Mr. Khandeparkar, learned Counsel appearing for the Respondent Nos 2 to 4 would submit that Applicants are shareholders of Company and suit against Respondent No.1-Company was filed for specific performance of agreement for sale of the asset of company in which the share holders have no interest. To buttress his submissions, he relies upon the decision of ***Bacha F. Guzdar v. Commissioner of Income Tax***[2] and ***Bakul M. Kapadia v. Bank of India***[3] **.**

14. He submits that case of the Applicants is of mismanagement of Respondent No.1-Company for which the remedy is under Section 241/242 of Companies Act. He submits that the rejection of impleadment application right upto the Hon'ble Apex Court assumes significance as the Applicants were not held to be necessary and proper party. He would submit that the ground to seek leave to file Appeal cannot travel beyond Order-I Rule-10 of CPC in a suit for specific performance. He would further submit that the decision in the case of ***H. Anjanappa v. A. Prabhakar*** (supra) specifically governs the Application of transferee *pendente lite* and is rendered in a different factual scenario. He submits that though Division Bench observed that Applicants can adopt any derivative action, the derivative action can only be under Section 241 or 242 of the Companies Act on the ground of oppression and mismanagement. He submits that the valuation of shares of Applicants being based on the outcome of civil court proceedings cannot entitle the Applicants to leave to file Appeal.

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2 (1954) 2 SCC 563.

3 1993 SCC OnLine Bom 224.

15. He would further submit that decision in the case of ***H. Anjanappa v. A. Prabhakar*** (supra) has held that it would be improper to grant leave to file Appeal to every person who may in some remote and indirect way would be prejudicially affected by decree or judgment. He submits that in the present case, prejudice sought to be demonstrated is an indirect loss by reason of decrease in the valuation of shares which is referable to Section 242 of the Companies Act.

16. He submits that depletion of the value of shares cannot be a ground to file Appeal and will only open the floodgates to the shareholders of a Company to challenge any decision of the Company having gone wrong as each decision taken by the Company is likely to affect the valuation of shares of the shareholder. He submits that the Applicants are not even shareholders and only obligation towards them is payment due as per valuation. He submits that the Applicants do not fall within the ambit of Section 244 of the Companies Act for maintaining derivative action as their names do not reflect in the Register of Members of the Company and their prayer before the CLB to rectify the Register of Members has been deemed to be rejected upto the Supreme Court. He submits that in fact the leave which is sought is to resolve the dispute between the Applicant and the Company as regards the share valuation and as decree is already passed for specific performance against the Company, such decree cannot be assailed by shareholder.

17. He would further submit that the scope of impleadment is squarely covered in ***Kasturi v. Iyyamperumal***[4]. He submits that the Applicant's right is limited to receive what is due to him as per family agreement and their rights do not mature to counter the party who has obtained decree for specific performance.

18. He would further submit that as per order of Calcutta High Court dated 5th April 2005 the remedy of Applicants is under Sections 241/ 242 of the Companies Act or to sue for damages and the issue of valuation of shares of Applicant cannot be germane to the specific performance suit.

19. In rejoinder, Mr. Sancheti submits that the leave to file Appeal in the peculiar facts of the present case would not amount to opening floodgates as is sought to be contended. He submits that the peculiar facts of the present case will not exist and will not apply to each and every shareholder seeking to challenge an order passed against the Company. He submits that Calcutta High Court in its order dated 30th September 2004 has specifically recorded the submissions of the Company that the Applicant is the shareholder and it is only after the decree in the suit, the shareholding of Applicant would be transferred to Rajendra Prasad Poddar branch.

20. He would further submit that the Applicants cannot avail of the remedy under Sections 241/242 of the Companies Act as NCLT cannot

4 (2005) 6 SCC 733.

sit in appeal over the order of Trial Court and even if the Applicant is entitled to approach the NCLT, the same does not take away the Applicant's right as aggrieved party to challenge the impugned decree considering that the present proceedings are not defended by the Respondent No. 1 Company.

21. Mr. Jagtiani, submits that reliance on the decision in ***Bakul M. Kapadia v. Bank of India*** (supra) and ***Bacha F. Guzdar v. Commissioner of Income Tax*** (supra) is misplaced as the Applicant has a right to receive fair value of his shares based on the valuation of suit property which is the sole asset of the Company and the Applicant's right is directly linked to the outcome of present suit. He submits that Applicant's right to file a Petition under Section 241/242 of the Companies Act operate in a distinct and separate sphere and will not take away the Applicant's right to seek leave to file Appeal upon prejudice being demonstrated. He submits that the Applicant cannot be compelled to maintain only claim for damages against other shareholders and not protect the property of the Company by filing an Appeal. He would further distinguish the judgments in the case of ***N. G. George v. Shirley Varkey***[5], ***Kasturi v. Iyyamperumal, Shyamlal Purohit v. Jagannath Ray***[6] and ***BRS Ventures Investments v. SREI Infrastructure Finance Limited***[7] relied upon by learned Counsel for the Respondent as the same are rendered in different factual scenario.

5 2009 SCC Online Ker 940.

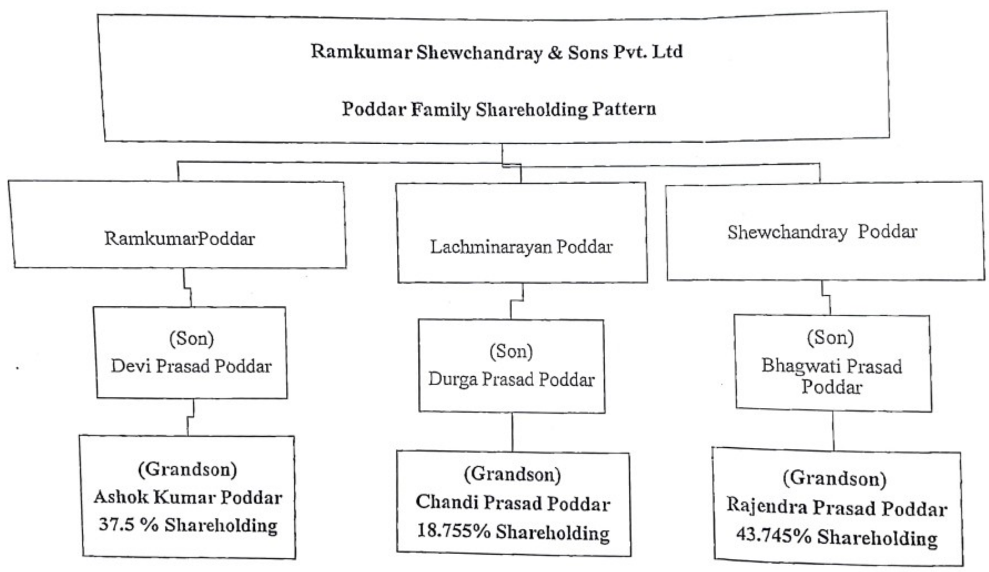
6 1968 SCC Online Cal 99.

7 (2025) 1 SCC 456.

REASONS AND ANALYSIS:

22. The issue arising for consideration is maintainability of derivative action by the share holders for benefit of Respondent No.1 Company in the context of seeking grant of leave to file Appeal under Section 96 of CPC.

23. In order to have a clarity on the various branches of Poddar family, the chart tendered by the Applicants is reproduced hereinbelow:



24. The Respondent No.1-Company is under controlling management of Rajendra Prasad Poddar branch as per the Family Arrangement. To recapitulate the previous events and litigation, the Family Arrangement dated 15th July, 1989 between members of Poddar

Family provided for buy out of the Applicants share holding by Rajendra Prasad Poddar branch. Company Petition No.31 of 1996 culminated in order dated 24th February, 2024 linking the buy out share price to outcome of Civil suit resulting in determination of share value at Rs Rs 958.10 per share upon dismissal of the suit and in reverse case at nominal valuation of Re.1/- per share. The Hon'ble Apex Court by order dated 29th November, 2016, directed fresh valuation after conclusion of Civil Suit reinforcing the linkage of the buy out price to outcome of the civil suit.

25. As civil suit stood decreed, for purpose of implementation of Family Arrangement, the shares would be notionally valued, unless the Appellate proceedings, if initiated, resulted in reversal of decree. The attempt of Respondent Nos 2 to 4 is to terminate the challenge at the threshold by resisting the grant of leave to file Appeal. Respondent No 1 has remained neutral and unresponsive to the present application and whether the Applicants, though being gravely prejudiced by the impugned judgment, should be precluded from questioning the impugned judgment by filing derivative action is the issue.

26. The Applicants claim to hold about 56% shareholding of Respondent No.1-Company and desires to initiate derivative action of filing Appeal on behalf of Respondent No.1-Company. The right of the Applicants to adopt derivative action was recognised by the Hon'ble

Division Bench of this Court in its order dated 5th April, 2005 as under:

> "3. The Learned Judge has rightly held that the Appellant as Director of the Company has no independent right in the assets of the company and entitled therefore to be impleaded in a suit filed by the company. The Appellant holds 18% share in the equity shares of the Defendant Company. The remedy of the Appellant however is not by having himself impleaded in the suit. If, according to him, the company will not defend the suit properly and will act to the detriment of the Company, it is always open to the Appellant to adopt proceedings in accordance with law to safeguard the interest of the company such as by resorting to provisions of Section 397 and 398 of Companies Act or by filing a derivative action."

27. Company Law jurisprudence recognises the right of share holders to maintain derivative action on behalf of the Company. The foundation of derivative action is failure on part of the Company to take preventive action despite being called upon by the shareholders. The communication by the Applicants to Rajendra Prasad Poddar calling upon him to adopt appropriate steps for challenging the impugned judgment has remained unresponsive. The Respondent Nos 2 to 4 have put forth their defence of absence of any right of share holder in assets of the Company.

28. The conclusion of the civil suit has direct negative impact on the buy out price of the shares of Respondent No 1. It is this prejudice which forms the basis for seeking leave to file Appeal. The case of the Applicants is not premised on any right, title and interest in the assets of the Respondent No.1-Company, though in the present case, as the suit was for specific performance of agreement for sale of Company asset, the property of the Company is involved. If, the share valuation would have been linked to any other action of the Respondent No.1-Company, say for example, to the Company being awarded any tender which would have resulted in increase in share value, in that case also, if the Applicants on being aggrieved would be entitled to maintain derivative action. Incidentally, in present case, the Family Arrangement entered into between the parties and Court orders have intrinsically linked the share valuation to the outcome of civil proceedings, in which the asset of the Company is the subject matter. The Family Arrangement clothes the Applicants with special interest in the outcome of the civil proceedings, which would not be the case of an ordinary shareholder of a Company. The subject matter of the civil suit being an asset of the Company cannot lead to a conclusion that the right asserted by the Applicants is a right to the asset of the Company.

29. Indisputably, the Company being a separate and distinct legal entity, the shareholders would not have any right, title and interest in the assets of the company. There is no quarrel with the proposition of law laid down in ***Bakul M. Kapadia, Bacha F. Guzdar and BRS Venturs Investment Limited*** (supra)**.** The right of the Applicants to seek leave to file Appeal emanates from the prejudice caused by the impugned judgment. The direct nexus between the economic interest of the

Applicants and the outcome of the proceedings has been duly recognised by the Hon'ble Apex Court in its order dated 29th November, 2016.

30. The right to maintain a derivative action of Appeal under Section 96 of CPC comes with a further caveat that the Applicants must demonstrate prejudice being caused by the outcome of the suit proceedings. The summary of facts noted above read with the Court orders leading to the share valuation being linked to the outcome of the civil proceedings, which stands concluded to the detriment of the Applicants is already discussed above. There cannot be any shying away from the fact that the impugned judgment has resulted in the shares being valued notionally at Rs 1/ which affects the Applicants.

31. The principles governing the grant of leave to file appeal has been succinctly summarised by the Hon'ble Apex Court in ***H. Anjanappa v. A. Prabhakar*** (supra). The Hon'ble Apex Court summed up the principles in paragraph 43 as under:

> **"43.** The principles governing the grant of leave to appeal may be summarised as under:
>
> > **i.** Sections 96 and 100 of the CPC respectively provide for preferring an appeal from an original decree or decree in appeal respectively;
> >
> > **ii.** The said provisions do not enumerate the categories of persons who can file an appeal;

> **iii.** However, it a settled legal proposition that a stranger cannot be permitted to file an appeal in any proceedings unless he satisfies the court that he falls within the category of an aggrieved person;
>
> **iv.** It is only where a judgment and decree prejudicially affects a person who is not a party to the proceedings, he can prefer an appeal with the leave of the court;
>
> **v.** A person aggrieved, to file an appeal, must be one whose right is affected by reason of the judgment and decree sought to be impugned;
>
> **vi.** The expression "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury;
>
> **vii.** It would be improper to grant leave to appeal to every person who may in some remote or indirect way be prejudicially affected by a decree or judgment; and
>
> **viii.** Ordinarily leave to appeal should be granted to persons who, though not parties to the proceedings, would be bound by the decree or judgment in that proceeding and who would be precluded from attacking its correctness in other proceedings."

32. Though the decision was rendered by the Hon'ble Apex Court in the context of considering an application by *lis pendens* transferee, the principles governing the grant of leave to file appeal is equally applicable to present case. The sole essential inquiry contemplated while granting leave to file appeal to a third party to the proceedings is that the party should be aggrieved by the order. The Hon'ble Apex Court noted the observation of the Constitution Bench in ***Adi Pherozshah Gandhi v. H.M.Seerval***[8] as under:

> "9. Generally speaking, a person can be said to be aggrieved by an order which is to his detriment, pecuniary or otherwise or causes him some prejudice in some form or other. ……."

8 (1970) 2 SCC 484.

33. The decree directs the suit property to be sold to Respondent No.2 at Rs.20 Lakh at the 1981 price, whereas according to Applicants, the value is about Rs.100 crores. The escalation of real estate prices of premium location in a city like Bombay is not unknown. The orders of the Company Law Board which were upheld right upto the Hon'ble Apex Court would preclude the Applicants from disputing the valuation of shares in any parallel proceedings pursuant to the decree in specific performance suit. The decree has effectively sealed the fate of Applicants who will now be compelled to accept the decreased notional valuation and severely prejudices the rights of Applicants. On the other hand, the decree wipes out the liability of Rajendra Prasad Poddar Branch to buy out the Applicants at valuation of Rs.958.10/- per share.

34. In ***N.C. George vs Shirley Varkey*** (supra), relied upon by Mr. Khandeparkar, one of the issues arising for consideration was whether the share holder was competent to maintain an application to impeach the sale of Company's property. The observation was that the share holder can maintain his application only if he is able to satisfy that his interest is affected by the sale. After examining the position of share holder *vis-a-vis* the assets of the Company, it was observed that the shareholder therein was not clothed with an authority or special interest in the assets of the Company. In the present case, in view of the interlink between the buy out price and the outcome of suit proceedings, the Applicants are entitled to maintain the derivative action. The decision of ***Shyamlal Purohit vs Jagannath Ray*** (supra) is rendered in different factual scenario as no conditions existed therein for the shareholder to impeach the sale.

35. Although the Applicant's impleadment application under Order 1 Rule 10 of CPC was rejected by the Court, the rejection was on the ground that the Director would not have any share in assets of the Company. Post decree, the inquiry contemplated is whether the Applicants are prejudicially affected by the outcome of the proceedings for grant of leave to file appeal. The decision of ***Kasturi vs Iyyamperumal*** (supra) deals with the issue of Order-I Rule 10 of CPC in context of impleadment of stranger or third party to the contract claiming independent title over contracted party. The said issue does not arise in the present case. The refusal of impleadment *per se* would not create any obstacle in the right of the Applicants to seek leave to file Appeal, if prejudice is demonstrated. As held by the Hon'ble Apex Court in ***H. Anjanappa v. A. Prabhakar*** (supra) that rejection of impleadment application is *per se* not a ground to reject application for leave to file Appeal.

36. The submission of remedy under Section 241/242 of the Companies Act, is canvassed as availability of an alternate remedy.

Even the availability of an alternate remedy, cannot come into the way of the Applicants seeking leave to question the correctness of judgment. The members of the Company undoubtedly have a right to approach the NCLT if the affairs of the Company are being conducted in a manner prejudicial to the interest of the Company and the Tribunal may with a view to bring to an end the matters complained of, make such order as it thinks fit. The remedy available under Section 241/242 is for enforcing the personal actions of the share holders which is distinct from maintaining derivative action on behalf of the Company. Sub-Section (2) of Section 242 sets out the nature of orders which may be passed by NCLT without prejudice to the generality of the powers under sub-section (1). Perusal of the orders specified under Sub-Section (2) of Section 242 demonstrates that none of same would remedy the act complained i.e. inaction on part of Company to challenge the impugned judgment. Considering that the subject matter of the civil suit was the agreement for sale, Clause (g) of Sub-Section (2) which provides for termination, modification etc of the agreement could have effectively remedied the prejudice, however, the order is dependent on the consent of Respondent No.2 and in wake of the order of Civil Court, the NCLT would not have the jurisdiction to even consider granting such order. It cannot be contended that the Applicants will have to satisfy themselves with proceeding against the

Respondent No.1-Company and the controlling Director for inaction to file Appeal or for damages and will not be entitled to challenge the impugned judgment even if it severely prejudices their rights.

37. Mr. Khandeparkar has raised contradictory submissions by contending that Applicants are not shareholders of Respondent No.1-Company, in which case, the submission on availability of alternate remedy before NCLT cannot be agitated. That apart, there is no substance in the argument as the buy out of the shares which was to take place after conclusion of suit, has not yet taken place as noted by the Calcutta High Court in order dated 30th September, 2004.

38. The submission that granting leave to file Appeal would open floodgates of litigation overlooks the peculiar facts of the present case, where under a family arrangement between the parties for purchase of the share holding of the Applicants, the valuation has prejudiced the rights of the Applicants, which would not be the usual case of ordinary share holders of a Company. This position has occurred as the Company was a family owned Company in the nature of quasi partnership.

39. The present Application does not seek resolution of a dispute between the shareholders *inter* se or dispute about the valuation of the shares, which stands concluded by prior orders. Indisputably even a stranger to the decree, if able to demonstrate that he is aggrieved person is entitled to maintain an action to challenge the decree. The right which would otherwise be available even to a stranger cannot be deprived to the Applicants by reason of the transaction being in the nature of buy out of shares of the Respondent No.1-Company.

40. The position presented before this Court is the post suit position. The economic injury suffered by the Applicants by the conclusion of the civil suit is not a remote or indirect injury. Being prejudicially affected, the Applicants would be entitled to be granted leave to file Appeal to question the correctness of impugned judgment.

41. As the test of the Applicants being aggrieved person and prejudicially affected by the impugned judgment stands satisfied, the Interim Applications are allowed. The Applicants are granted leave to file Appeal to challenge the impugned judgment dated 23rd October, 2023.

[Sharmila U. Deshmukh, J.]